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## THE "DWIGHT METHOD."

IN 1891 the New York Law School was started in order to perpetuate the "Dwight method" of teaching law. Contemporaneously, the School of Law at Columbia College discarded that method as necessarily the best known among men. As professor *emeritus*, Mr. Dwight lent the lustre of his name to the older school in which, throughout thirty-three years, he had applied his method; during that period he sent to the bar over four thousand young men in whom he had at least awakened enthusiasm for their life-work, and by whom he is remembered as a teacher of the law perhaps without a rival in this country.

The present method of instruction in law at Columbia is substantially that now and for over twenty years used at the Harvard Law School; that is, the tracing of the development of legal principles by the study of selected cases. At Columbia, however, beginners are allowed to survey a given subject by the use of a text-book either before or along with the study of cases. There, too, each instructor has the singular license to apply the method he deems best. This possibly means that no one man shall hereafter in himself constitute the school, and that while the school as an institution of learning must persist in its identity, however the *personnel* of its instructors may change, still there may always be full scope for the extraordinary teacher when he appears.

In New York city there are always many young men who, from their special exigencies, must reach the bar by the shortest and easiest cut. There was a time when the local law-schools served such men best, and the change for the better was imposed upon those schools by pressure from the outside. Such students, at the same time they attend the School, usually serve in offices of practising attorneys. The Columbia School plainly announces that she does not exist for students who are under this double duty. She makes equally plain her munificence, in which deserving students may participate, and which fully atones for any benefits to be derived from such service in a law-office. If this scheme of doing double duty spoils a good student, attorneys having experience with it will agree that for the time it mars a good clerk. A business enterprise to meet the demands of such as must do this

double duty may be perfectly respectable, but it should pretend to be nothing more. A university cannot temporize, but, despite ulterior considerations, it must strive to furnish the best possible education in the law.

It is the purpose of this article briefly to exhibit what the so-called "Dwight method" is, the author of this article being of the class of 1877 of the Columbia Law School, and therefore acquainted with the method of that School. He has recently been astonished — as have others of his fellow alumni — by claims that have been published in regard to the "Dwight method." He has, for instance, just received a circular relating to this method, sent out by the new School and signed by its dean, containing, among other "tributes," the following: "The failure of a single student of thirty successive annual classes to discover, after engaging in active practice, any defect or oversight in his legal training, is a sufficient commentary on the method employed." If this claim be just, then the method referred to must be the best one; and as it is fairly of public concern that the best method of making lawyers should be widely known, it may be seasonable to illustrate that method by one experience under it, and the REVIEW may publish for that purpose an article rather aside from the usual character of its columns. This contribution is made upon the writer's own suggestion. He only is responsible for its contents; and whatever interest he may have must incline him to justify the above "tribute" to the "Dwight method," and to demonstrate that his degree won by that method is a significant decoration. For the sake of fairness, the illustration must be in some detail, as otherwise the entire method, or some excellency of it, might elude the reader.

When the writer was a student of law at Columbia — which was sixteen years ago; but it is announced that the method used there has been the same for thirty-three years — the Law School was conducted in an old building, which, though once a capacious private residence, was not at all fitted for the purposes of teaching a large body of men law by any method. Good moral character was required of candidates for admission to the School, and its diploma, *ipso facto*, admitted holders to the New York bar. This privilege the local General Term of the Supreme Court already regarded with disfavor. The course was for two years, and the entire number of students — there being two classes in the School — was about four hundred and fifty. The class to which the writer belonged numbered two hundred and thirty. Each

class was divided into a forenoon and an afternoon section. The writer during both years attended daily both the junior and senior recitations. A certain portion of each day was devoted by the students to writing from dictation a sort of commentary on the law (largely the law of New York State) prepared by Professor Dwight. This was by way of supplement to the text-books used. In the commentary, cases were cited abundantly, and the student was supposed to familiarize himself, without recitation, with the text of the commentary. The entire instruction of both classes for both years, with the exception of the instruction in Torts from Addison's treatise, was by Professor Dwight himself, and consisted of extracts from Blackstone, Parsons on Contract, Washburn's Real Estate, Greenleaf's Evidence, Potter's Willard's Equity, and the New York Code of Civil Procedure. Courses, exclusively by lecture, were given on Criminal Law, Common Law Pleading, Medical Jurisprudence, Roman Law, and Political Science, either at noon-time or in the evening, and were merely optional, only irregularly and sparsely attended, and when the last of these lectures was delivered, they were heard of no more, with the exception of the course on Political Science, in which a prize in money was awarded to the student passing the best written examination and writing the best essay of three thousand words on "The Meaning of Political Revolutions." For this prize there were usually about ten competitors. On Fridays the time which was devoted on other days to recitation was given to moot-courts, the printed case having been distributed among the students the previous week. This was an optional exercise; the attendance was meagre, and while occasionally a ready speaker came to light, on the whole the moot-courts were nugatory. The law library consisted of but a few hundred volumes in a room supplied with one long table and not over twenty chairs. The books used during the day were left on the table, where by night as many as one hundred volumes might have accumulated. There were, on the average, not more than ten students using the library at one time. The room was usually empty; but just before or after a recitation it was a popular resort. The order was not good, loud conversations — often on politics — were carried on, tobacco was freely used, and there was no place to leave hats or coats. Many of the students never used the library. Those serving in offices hurried to the School just as recitations began, and left the instant they were finished. It may here be interpolated that in the new School,

where the "Dwight method" is still applied, there were, last year, five hundred and eight students and a very well furnished library of fourteen thousand volumes. A liberal average of these five hundred and eight students using the library at any time would be twenty-five, and these *habitues*, the same persons from day to day; and their use of the books depended on the prior right to them of possibly twelve hundred persons (the tenants of the Equitable Building and the members of the Lawyers' Club). Thus one may estimate what is the necessary relation between the "Dwight method" and a law library.

In the Law School of Columbia of the writer's time there were one or two voluntary law clubs, each with a large nominal membership. The proceedings were conducted jovially, and the spirit of repartee prevailed. The clubs promised amusement rather than profit.

Attendance at recitations seemed to be voluntary, but it was always prompt, and the room was filled to the utmost. The questions were based directly on the text-book, in which a stint had previously been assigned for preparation. The foot-notes in the book were rarely commented on, and by most of the students were never read. The recitation never lagged; it was always brisk, as by far the greater part of the talking was by Professor Dwight. He cited cases constantly, often by mere volume and page; but when the case was of great significance, he stated and analyzed it luminously, as it was his singular gift to do. During the two years' course the cases he cited must have covered a number of thousands of pages. The reading of a case by the students was never exacted, and a question was never predicated upon the fact that a case had been read. Cases were known and remembered by reason of the teacher's comments on them. This was the extent to which students were "encouraged" to read cases. No recitation lasted longer than ninety minutes, and of these recitations there were four a week, in which about one hundred and fifty men were to be questioned. These men always recited in strict alphabetical order, so that each man had his chance to be heard about once a week. The questions were put quickly and with wonderful tact, which was sometimes outshone by the tactful use of a surprising answer. If the reply was not responsive, or was otherwise bad, it was nobody's loss. It would have been responsive to another question, or true under other circumstances. That other question and those other circumstances were instantly brought to light and profitably dwelt

upon by the teacher. No student ever had his "faculties tried in the highest degree," or was ever driven to a standstill. Every student was "encouraged." Occasionally a student of ability or earlier training did discriminate or analyze: this was regarded with general favor. The teacher continually dropped practical suggestions well worth remembering. He had the knack of putting legal propositions so that they would stick in a fairly receptive mind. He never failed to recommend habits of hard work. He often declared that every successful lawyer must expect crises when the act of a moment must be the result of long periods of systematic preparation. He declared that the law was not all theory, science, or history, but was in parts one, in parts the other; and he touched upon it in one or more of these phases only as the moment required. The final examinations for a degree were oral, and throughout specifically like the recitations.

In these details we have the "Dwight method." It is obvious how very large a part of it was Professor Dwight himself. It is conceivable he might succeed where many another might fail with any given method. He was a marked character, sufficiently so to justify some direct personal comment on him. He was a man of robust health, of considerably more than ordinary stature, erect, and well built. His head was made venerable by a plentiful growth of hair almost white. His eye needed no glass, was bright, and his ruddy face lighted up easily with a smile, altogether giving an impression of benignity and abiding youthfulness. He habitually wore an easy fitting suit of broadcloth, and shoes that were an immutable solace, not to him only, but to the students who clustered at his feet, and who believed this foot-gear was an object-lesson in equity,—averse to hardships, and always following the law. His voice was quite high-pitched, but carried remarkably well, was of pleasant quality, and seemed never to show fatigue after long use. He was at the School, either in his private office or in the class-room, early and late. He always seemed to have an immediate purpose. He was never idle. At the School he was always found working at the law. He knew the latest decisions. He watched for decisions that were to be expected. His power of concentration must have been great, yet he was always accessible and obliging. He would at the request of any student put aside the matter in which he was for the time absorbed. All students treated him as the oracle to be consulted, as the one who could and would make the law plain. Many seemed to act on the belief that

their advancement depended chiefly on personal contact with this man, whom they therefore sought out and questioned on any pretext and at any time. The writer never heard of his dealing a rebuff, or of his temper being ruffled, but has witnessed admirable displays of his patient endurance of triflers. With all this kindness and accessibility, there was no lack of dignity. Every student respected this man. He had the knack in conversation of monopolizing all mental activity, or of letting his interlocutor do exactly such thinking as he deemed that interlocutor capable of. In the class-room this power was most deftly used. He knew his men, not by name merely, but by calibre, and put just such strain on each student's faculties as he deemed might be safely borne. He could so cross-question a dunce that the dunce would come off amazed at his own unconscious cerebration. He had a greater variety of students to deal with than is ordinarily found in any school, not only as regards previous education, but as regards social status. His heart warmed — but not too obviously — towards the earnest, capable student; but he indulged in no favoritism. He expressed himself in a single cordial manner towards all. The letters with which he sent men from his School seemed to show a lack of discrimination; but a second reading would disclose that in reality he did discriminate, however that fact might be veiled by his kindly intent to lend the bearer of the letter a helping hand. He was patriotic, an out-spoken and active party man. Most of his students were voters, and very many of them not of his political faith. He would enter freely into a conversation on politics, and out of school hours preside at or address political meetings. Once in class he even recommended the students to vote for a certain nominee for a judgeship. All this was in so happy a manner that he gave no offence and incurred no criticism. That the students believed him to be a practical man added to his sway. They knew that as a judge in the highest court of New York he had elaborated important opinions; they knew he had been successful at the bar, and that between his hours of teaching, practising attorneys sought his counsel. Many an office student asked his opinion on some legal problem pending in the office where he served, and the opinion was always given freely. In utterance he was ready, but his speech was peculiarly clear and homely. Such embellishments as he allowed himself were by striking illustrations from history or the current affairs of the day, or by an occasional witty story. These were never meretricious. He knew by long use of most of them

that they were positive aids to his purpose, which was always serious. He was a man of broad, liberal spirit, urging his men that their chosen profession and the elevation of the law should have their first interest, but that every lawyer should have some other, outside, useful or public-spirited interest. He resented at once, and effectually, any inquiries designed to assist the pettifogger. No teacher was ever less of a pedagogue, no scholar ever less of a bookworm. His influence he must have gladly known, but he was modest as to that, and generally. This influence was never anything but wholesome. If, as rarely happened, his duties for the hour were assigned to another, for that hour the School was nearly deserted. Day after day and all day, in a room ill suited to the purpose and crowded beyond its seating capacity,—surrounded by students sitting on the floor and to his very feet,—Professor Dwight applied his method (doing himself four-fifths of the talking, call it recitation or what you will) with unflagging buoyancy. He made everything so plain as he went, and he went so quickly, that the student might delude himself with the belief that our whole jurisprudence was innate in himself, and only awaited the awaking touch of the great teacher. He aroused and he riveted the attention of all to a degree that was very great, and wholly exceptional in a school-room. Strangest of all, his own interest in the work appeared to be as fresh and exuberant as that of any of his listeners.

Any method of teaching must have been a mere accessory to such a personality as that of Professor Dwight, nor can there be surprise that the great body of students sent forth by this remarkable teacher stand as his partisans. In the writer's day a large number of the students at the School had had little or no experience with any method of education, but there were also many graduates —some men of the first rank—from our leading colleges. For the untrained, perhaps no other than the "Dwight method" would have answered, and it did answer so well that these men appeared on a common level of excellence with the men of previous training and high rank. The consensus of those college-bred men at that time was that Professor Dwight was the School, and the method of instruction ephemeral.

It must seem—and the writer's experience and observation of its workings bear this out—that the method traced above imposes no stress on the student beyond the necessity of putting himself into a quite receptive state: of listening and of remembering.

This is in degree and kind wholly unlike the demands upon the resources of a practising lawyer from the beginning to the end of his career. The law, for the student, is not merely something to know of, but also something to do; and the method that inures the student to such mental processes as are to be his very tools of trade when he starts upon his independent career is the method that will best fit him for any responsibility he may assume for his first or for his last client. Here, then, may be the defect of the "Dwight method." The writer and many others could not have been duly considered among the "students of thirty successful annual classes" when it is declared that no such student has been able "to discover . . . any defect or oversight in his legal training."

It is said that "no other system of instruction has succeeded in making sound lawyers, nor probably ever will." It would be most profitable to know how this absolute conclusion could be arrived at safely. It is sound, not merely successful, lawyers that a disinterested institution of learning must devise a method to create. It might well be asked whether the honorable members of our highest Federal bench have had the advantages of this one perfect method; for if not, then the other and uglier horn of the dilemma would stick out.

Since the birth of the New York Law School the merits of each method have been somewhat ventilated by pamphlets, from which it may be seen how the claims of the new School as to the "Dwight method" reflect the account given above. If it were not for the claim that the "Dwight method" is the one exclusively sound, the reader of the pamphlets *pro* and *con* might fairly conclude that both methods might coexist: the "case method" for those who have capacity, or want soon to acquire capacity, to know and apply law; the "Dwight method" for those who have no such present capacity, but hope to attain it at least by the time they are admitted to practice. The former method would be pursued by students ready to "try their faculties in the highest degree" by "a system in which principles are studied in their application to facts;" "to develop the power of legal analysis and synthesis," under the guidance of a teacher, by the examination and comparison of selected cases, thus gaining "a knowledge of what the law actually is." The latter method would exist for such as "*may* read cases to illustrate principles;" for students whose "interest must be aroused," who are "*encouraged*, . . . after some acquaintance with general

legal rules, to read and carefully study leading cases," who want while in the School "to obtain an outline of legal principles," leaving it as "the business of their later lives to fill up this outline . . . partly by the exercise of their reasoning powers, . . . and partly by the examination of adjudged cases;" for students who, when they become lawyers, will devote a great part of their lives to the study of cases, and, it is said, "*they will then have the capacity for such study.*" The italics are the writer's. It is obvious that each method serves a particular grade of student, and it seems clear which method the higher grade will select.

The New York Law School declares that "a teacher's office is to teach." The significance of this language varies as Professor Dwight or some other may be the instructor, or as a kindergarten or a law-school is the scene of instruction. In the former, it must be nearly all teaching by the teacher; in the latter, it should be nearly all learning by the student, under the guide of the teacher. Every student in a law-school should be in earnest, either from the instinct of self-preservation, or from ambition to test his "capacity" for his chosen life-work. As a body, such students should have survived all led or "dumb-driven" cattle. That method which is so akin to the method of actual practice of the law that it may demonstrate to the student at the outset his want of capacity may already prove a blessing to him. While it may prove wise, and, for the time being, pleasant, "to arouse his interest" and to "*encourage him,*" the chances are against ultimately making a sound lawyer by this method.

The pamphlet of the new School, dated April, 1893, contains two illustrations which display a grave misconception of this matter. So far as they illustrate, they show the necessity of the case method. "The wisest man," says the dean of the School, "as well as the simplest school-boy, when he begins the study of Greek, is apt to begin with the alphabet, and not with trying to read *Aeschylus.*" What is the alphabet of the law, if not cases that have developed principles? Would it not be strange if some gifted teacher, by exhibiting "the outline" of "Prometheus" and dilating on its transcendent excellencies, should so "arouse the interest" of some wise man or simple school-boy seeking to learn Greek as to *encourage* him to make it the business of his later life to study the alphabet of that language, to live by teaching it himself?

The pamphleteer, in illustration, says, "If a young man wishes

to learn English history, is he sent to Europe to ransack the archives and study the original documents, or are the works of Green and Gardiner and Macaulay put into his hands?" The answer is, that if this young man wants to be an historian in the sense that every law student presumably wants to be a lawyer, it is notoriously the method of every institution of learning of high character to prescribe that he shall deal only with the archives and original documents. But if the young man wants the mere literature of history, he may read "approved text-books" on that subject. Ever since men have had affairs, however simple, to adjust, there have been laws, however clumsy, to adjust them by, and these laws have been applied by those who have made a special study of them. If immemorial usage has shown any method to be always present in the study and application of law in its rude or in its highly developed state, it is the case method.

The exercises upon the graduation of the law class to which the writer belonged consisted of addresses by Professor Dwight and Charles O'Conor. The former said he could not forecast the future of a single member of the class, as he had too often seen his most promising pupils, on going into active practice, stricken as by a complete paralysis, from which they never recovered. Charles O'Conor — a sound lawyer, but by what method we shall not ask — affirmed that a law-school had given its *élèves* a poor equipment if it sent them forth full of learning, but without any skill in applying it.

Facts are shy. Even if the controlling principle of a case may be casually announced, the facts do not gravitate to it. No matter how thoroughly one may be versed in legal principle, he must have the capacity to select from the complicated details that always encumber a transaction the relevant master facts that bind his case to recognized rules of law, and to justify his selection against all opposition. To do this well is the chief excellence of the sound lawyer. It is done by the "case method." Those educators who in sincerity and by deliberate choice apply this method as a means of instruction may themselves feel encouraged by the fact that the exponents of "the only system" which "has succeeded in making sound lawyers" have announced that they were (in 1891) preparing a selection of cases to be read by students in connection with text-books.

Thomas Fenton Taylor.